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October 5, 2015

BY ECF

Honorable Sarah Netburn
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Dallas Pesola v. City of New York, et al., No. 15 Civ. 1917-PKC-SN

Dear Judge Netburn:

Pursuant to the Court's Order filed October 5, 2015, the parties jointly submit this letter.

Brief statement of the claims and defenses:

A. Plaintiff alleges that his arrest while observing protest activities on March 17, 2012, was without probable cause, was effected using excessive force, resulted from a continuing New York City policy of stifling First Amendment activity in public spaces through false arrests and use of excessive force. Thereafter, he was maliciously prosecuted on the basis of false police reports, and suffered unconstitutionally prolonged pre-arraignment detention in retaliation for his refusal to submit to an inner-eye scan.

B. Defendants deny plaintiff's claims and state, *inter alia*:

- a. plaintiff fails to state a claim upon which relief can be granted;
 - b. There was probable cause for plaintiff's arrests, detention and any purported prosecution;
 - c. Any injury alleged by plaintiff was not the proximate result of any act of defendants;
 - d. The City of New York is entitled to governmental immunity;
 - e. The individual officers in this action are entitled to qualified immunity.
- Defendants believe this case can be resolved by dispositive motion.

Current pre-trial schedule:

1. By order filed May 13, 2015, the Court adopted the United States District Court Southern District of New York Plan For Certain § 1983 Cases Against The City Of New York, whereby mediation and discovery are stayed until after Defendants have answered.

2. By order filed May 13, 2015 the Court set a case management conference date of 2 PM, September 25, 2015.
3. By order filed May 20, 2015, the case management conference, combined with a pre-motion filing conference with regard to Defendants' contemplated Fed.R.Civ.P. Rule 12(b)(6) Motion to Dismiss, was scheduled for June 2, 2015.
4. By order filed July 17, 2015, the Court set a motion briefing schedule for Defendants' Fed.R.Civ.P. Rule 12(b)(6) Motion to Dismiss as follows: Motion due August 21, 2015; Opposition due September 18, 2015; Reply due October 2, 2015. That motion is now pending before the Court.

Status of discovery:

The parties have *not* completed Initial Discovery. At this time before the court is a fully briefed 12(b)(6) motion to dismiss. By order filed May 13, 2015, the Court adopted the United States District Court Southern District of New York Plan For Certain § 1983 Cases Against The City Of New York, whereby mediation and discovery are stayed until after Defendants have answered. The parties appeared for an initial conference before the Honorable P. Kevin Castel on May 12, 2015. Subsequently the parties appeared before the Honorable Michael H. Dolinger on June 2, 2015 for an initial conference. At both conferences the parties discussed a proposed Rule 12 motion by defendants. At the June 2, 2015, conference the Court declined to set a schedule, in part due to the proposed motions.

Whether the parties have had settlement talks or wish to schedule a settlement conference at this time:

The parties wish to proceed pursuant to the United States District Court Southern District of New York Plan For Certain § 1983 Cases Against The City Of New York, whereby mediation and discovery are stayed until after Defendants have answered. The parties have not had settlement talks. At this time, defendants would like to await the disposition of the pending 12(b)(6) motion before scheduling a settlement conference. In either event, if the motion is not fully dispositive, the parties wish to proceed pursuant to the United States District Court Southern District of New York Plan For Certain § 1983 Cases Against The City Of New York, whereby mediation and discovery are stayed until after Defendants have answered.

Respectfully submitted:

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